

**233 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR No.3612 of 2018(O&M)

Date of decision :12.04.2019

Dinesh

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Aditya Sanghi, Advocate, for the petitioner.

Mr. Parveen Aggarwal, DAG, Haryana.

RAJBIR SEHRAWAT, J. (ORAL)

This is a revision petition filed for challenging the judgment/order dated 17.10.2018 passed by Additional Sessions Judge, Faridabad, whereby the appeal filed by the petitioner against the judgment of conviction and order of sentence, dated 06.01.2018, passed by Judicial Magistrate 1st Class, Faridabad has been dismissed, and thereby; the conviction of the petitioner under Sections 279, 304-A and 427 of IPC and award of the maximum sentence of rigorous imprisonment for a period of 02 years to the petitioner, has been upheld.

Learned counsel for the petitioner submits that although the petitioner had a very good case on merits, however, keeping in view that the petitioner had already undergone a part of sentence, therefore, he had restricted the present petition only qua the quantum of sentence. Accordingly, notice of motion was issued qua reduction of sentence only.

The facts leading to the present petition are that on 10.06.2012, the complainant-Naveen Kumar; along with his brother

Parveen Kumar, was coming on motorcycle from Old Faridabad to NIT Faridabad. His brother was ahead of him on his bicycle. At about 6.30 am when they reached in Sector-15-16; near Sarpanch Colony, then a canter; driven by the present petitioner; at a high speed and in a rash and negligent manner, hit the bicycle of the brother of the complainant from the back side. Due to this, Parveen Kumar, the brother of the complainant; was crushed under the rear tyres of the canter and he died on the spot. The petitioner had fled away from the spot; leaving behind his canter.

The prosecution led its evidence. The trial Court appreciated the evidence and convicted the petitioner under Sections 279, 304-A and 427 of IPC. On conviction, the trial Court sentenced the petitioner for maximum of 02 year of rigorous imprisonment; along with the punishment for smaller duration.

Aggrieved against the judgment of conviction and order of sentence passed by the trial Court, the petitioner preferred an appeal before the Additional Sessions Judge, Faridabad. However, that appeal was also dismissed by the Appellate Court on 17.10.2018. Accordingly, the present revision petition has been filed by the petitioner.

Learned counsel for the petitioner submits that the petitioner is the first offender. The age of the petitioner is about 35 years. He is the sole bread earner of his family and he is a driver by profession. He is required to discharge the responsibilities of the family life. Learned counsel for the petitioner also submits that out of the sentence of 02 years, the petitioner has already undergone more than 06 months of

sentence. It is further submitted by the counsel that, in any case, the petitioner has already learnt his lesson and he is on the way of reformation, therefore, during his custody in jail, his conduct has been without any blemish. Still further, having compassion towards the family of the deceased, the petitioner has even extended help to that family by making the payment of Rs.80,000/-. In the end, it is submitted that since the petitioner is also having two minor children and he is the sole bread earner of the family, therefore he deserves to be shown leniency. Learned counsel for the petitioner has also submitted that while receiving payment, which was made by the petitioner, even the wife of the deceased had pardoned the petitioner for his alleged act. Hence, it is submitted that the sentence of the petitioner be reduced to the period already undergone and he be released from the custody.

Sh. Varun Dutt Atri, Advocate, appearing on behalf of respondent No.2, on instructions from the complainant and the wife of the deceased, who are present in the Court, submits that the petitioner has made a payment of Rs.80,000/- to the family of the deceased. Hence, it is submitted by the counsel that even the complainant and the wife of the deceased do not have any objection if the sentence of the petitioner is reduced, because the wife of the deceased is having sympathy towards the children of the petitioner as well, and she does not want that children of the petitioner should be made to suffer due to the absence of the petitioner.

On the other hand, learned counsel for the State submits that there is no ground for releasing the petitioner by reducing sentence. The

Trial Court has also shown the leniency in awarding the sentence to the petitioner; which has been upheld by the appellate Court. Accordingly, it is submitted that the petition deserves to be dismissed and the petitioner deserves to serve the sentence awarded to him. Learned counsel for the State has also produced the custody certificate of the petitioner which shows that the petitioner has undergone total sentence of 06 months and 06 days; including remissions of 10 days; as on 12.04.2019.

Having heard learned counsel for the parties, this Court finds substance in the argument of the learned counsel for the petitioner. It is not denied by either of the sides that the petitioner is having two minor children. It is also on record that the petitioner is of the age of about 35 years. Therefore, this would show that the petitioner is deep down in the responsibilities of the family life. The petitioner has also earned remissions, while in custody; which also shows his tendency to reform himself. Besides this, the petitioner seems to have a kind of atonement and compassionate towards the children of the deceased. Accordingly, he is stated to have made some payment as compensation to the family of the deceased; besides what they had got in the claim petition under motor vehicles Act. In view of the above facts and also keeping in view the fact that the petitioner has undergone a substantial part of sentence, it would not be unjustified, if the sentence awarded to him is reduced to the period of sentence already undergone by him and he is given a chance to join the mainstream of the social life once again.

Accordingly, it is ordered that the present petition is partly allowed. While the petition qua challenge to the conviction is dismissed,

the same is allowed qua reduction of sentence. The sentence awarded to the petitioner is reduced to the period of sentence already undergone by him. Accordingly, the order of sentence passed by the Court below is ordered to be modified.

In view of the above, let the petitioner be released from the custody forthwith, if he is not required in connection with any other case.

(RAJBIR SEHRAWAT)
JUDGE

12.04.2019
hemlata

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No